

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
NATIONAL SCIENCE &)	Case No. 95F756
TECHNOLOGY NETWORK INC.)	
)	
Finder's Preference Request)	
For Station WIK720,)	
Riverside County, CA)	

ORDER**Adopted: March 23, 2000****Released: March 27, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition for reconsideration (Petition) submitted on November 19, 1999, by Southern California Alarm Service, Inc. (Southern California Alarm) seeking reconsideration of an October 20, 1999, action by the Public Safety and Private Wireless Division (Division).¹ The October 20, 1999, action reversed the November 6, 1995, dismissal of the finder's preference request filed by National Science & Technology Network Inc. (National Science) pertaining to Station WIK720, licensed to Southern California Alarm.² For the reasons stated below, Southern California Alarm's petition for reconsideration is denied.

2. *Background.* On May 24, 1995, National Science filed a finder's preference request (Request) targeting Southern California Alarm's authorization to operate Station WIK720, Corona and Rancho Cucamonga, CA, on frequency pair 472.3125/475.3125 MHz.³ National Science alleged in its Request that Southern California Alarm failed to operate Station WIK720 from May 16, 1994, through May 16, 1995, a period of one year, in violation of Section 90.157 of the Commission's Rules.⁴ The Request was denied on November 6, 1995, by the former Office of Operations of the Wireless Telecommunications Bureau.⁵

¹Petition for Reconsideration (filed Nov. 19, 1999) (Petition).

²See National Science & Technology Network, Inc., *Order*, DA 99-2223 (WTB PSPWD rel. Oct. 20, 1999) (*Order*).

³*Id.* at ¶ 2.

⁴*Id.* (citing 47 C.F.R. § 90.157 (1995)).

⁵Letter from William H. Kellett, FCC, to Ted S. Henry, National Science & Technology Network, Inc. (Nov. 6, 1995).

3. National Science timely filed a petition for reconsideration⁶ relating to the November 6, 1995, action, which was granted by the Division on October 20, 1999.⁷ The Division concluded that Southern California Alarm had failed to provide any conclusive evidence that it had operated the two frequencies associated with Station WIK720 at any time during the subject period.⁸ Moreover, the Division found that Southern California Alarm had discontinued Station WIK720's repeater service, and was operating on only one of its two assigned frequencies, which was being used in "talk around" mode between mobile stations, instead of transmitting and receiving through a base station.⁹ The Division noted that the Commission's Rules require transmission and reception of radio signals between a base station and a mobile station for a system to be "placed in operation."¹⁰ Consequently, the Division concluded that the license for Station WIK720 had canceled automatically, and awarded National Science a dispositive preference for the frequencies associated with the station.¹¹ On November 19, 1999, Southern California Alarm requested reconsideration of the Division's decision.

4. *Discussion.* In its Petition, Southern California Alarm argues that the subject station was in operation. As evidence of station operation, it states that its base station was "working," and that it had been "paying the bills."¹² We are not persuaded by Southern California Alarm's contention that Station WIK720 had continuously operated. There is not sufficient evidence in the record to indicate that Southern California Alarm continuously operated Station WIK720 during the subject period. Southern California Alarm failed to provide any documentation, such as station-specific canceled checks, system maintenance records, equipment serial numbers, or sworn affidavits from employees who had used the system from May 16, 1994, to May 16, 1995, to demonstrate continuous operation of Station WIK720. Southern California Alarm also failed to provide any evidence that Station WIK720 operated by transmitting and receiving radio signals between a base station and a mobile station, as required by the Commission's Rules.¹³ Instead, there is evidence that Southern California Alarm communicated by sending signals from one vehicle to another without going through a repeater.¹⁴ Other than a bare statement that Station WIK720's base station was "working" at the time an FCC investigator visited its

⁶*Order* at ¶ 6.

⁷*Id.* at ¶¶ 14-15.

⁸*Order* at ¶ 11.

⁹*Id.* at ¶ 12.

¹⁰*Id.* (citing 47 C.F.R. §90.157 (1994); Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC Rcd 7297, 7299 ¶ 10 (1991)).

¹¹*Id.* at ¶ 13.

¹²*Petition* at 1.

¹³*See* Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, *Report and Order*, 6 FCC Rcd 7297, 7299 ¶ 10 (1991).

¹⁴*Order* at ¶ 9.

office, Southern California Alarm failed to provide any objective and documentary evidence, even in its Petition, that it had complied with the Commission's construction and operation rules.¹⁵

5. In sum, we continue to believe that National Science satisfied its burden of proof and demonstrated that Southern California Alarm failed to continuously operate Station WIK720 during the subject period, and that Southern California Alarm presented insufficient evidence to prove continuous operation of Station WIK720. Under the Commission's Rules, a station license cancels automatically upon permanent discontinuance of operation for a period of one year or more.¹⁶ We therefore affirm the October 20, 1999, action awarding a dispositive preference under the finder's preference program to National Science for the frequencies associated with Station WIK720.

6. IT IS ORDERED THAT pursuant to Sections 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 155(c), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Southern California Alarm Service, Inc. on November 19, 1999, IS DENIED.

7. As a result of this action, grant of the finder's preference request filed by National Science and Technology Network, Inc. on May 24, 1995, IS AFFIRMED. National Science and Technology Network, Inc. has ninety (90) days from the date of release of this *Order* to follow regular application requirements and file an acceptable application with the Commission for the frequencies associated with Station WIK720.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁵See generally *Veracon, Inc., Order*, DA 99-2055 (WTB PSPWD rel. Oct. 1, 1999) (target licensee of finder's preference proceedings did not prevail after failing to provide any objective and documentary evidence of compliance with the Commission's construction and operation rules); *Dale Kane d/b/a Kane Communications, Order*, 14 FCC Rcd 14052 (WTB PSPWD 1999) (same).

¹⁶47 C.F.R. § 90.157.